## 2AC Politics – TPA

Cyber attacks on infrastructure destroy the economy

AAP 13 AAP (Australian Associated Press) 06/12/13, Cyber wars would cripple economies: experts, http://www.businessspectator.com.au/news/2013/6/12/global-news/cyber-wars-would-cripple-economies-experts, (08/13/13

Cyber attackers have the power to shut down economies and a global cyber war could cause destruction on the scale of an atomic war, a cyber security expert says.¶ United States cyber security expert Scott Borg told a conference in Canberra that cyber attackers could completely destroy power generators using malicious software code.¶ "We are talking about nuclear exchange level destruction by pure cyber attack," Mr Borg added.¶ A loss of electric power for a few days would cause limited damage but a widespread shutdown beyond eight to ten days could effectively halt a nation's economy for months.¶ Speaking at the Australian Defence Magazine Cyber Security summit in Canberra, he said similar attacks could be mounted against other critical infrastructure like oil pipelines or refineries, railways and the financial sector.¶ Food and medicine distribution would be affected, along with transport and access to other necessities like heating.¶ "If you shut down the economy to that degree, we're not talking about people being inconvenienced," Mr Borg said. ¶ "In America, it's hundreds of thousands - maybe millions - die.¶ "For any other part of the world it's similar destruction."

Trade agreements inevitable

Watson, 12-19 [K.W., "Stay Off the Fast Track: Why Trade Promotion Authority Is Wrong for the Trans-Pacific Partnership," Cato, [www.cato.org/publications/free-trade-bulletin/stay-fast-track-why-trade-promotion-authority-wrong-trans-pacific](http://www.cato.org/publications/free-trade-bulletin/stay-fast-track-why-trade-promotion-authority-wrong-trans-pacific)]

The Obama administration has asked Congress to reinstate trade promotion authority in hopes that it will enable passage of the Trans-Pacific Partnership (TPP), a trade agreement being negotiated by 12 countries in the Asia-Pacific region. Advocates of free trade generally support trade promotion authority, because it eases the passage of trade agreements through Congress by guaranteeing an up-or-down vote with no amendments. While trade promotion authority can be useful, the **current political climate** in Washington reduces its benefits, and the late stage of the TPP negotiations raises the risk that trade promotion authority will do more harm than good. Free trade agreements are an important tool to improve U.S. trade policy, and "fast track" trade promotion authority has been helpful in securing the completion and passage of those agreements. But, contrary to the assertion of many trade advocates, trade promotion authority is not a necessary prerequisite to passing trade agreements. Trade policy has become much more partisan than it was when fast track was invented 40 years ago.1 With Republicans controlling the House of Representatives and a Democrat in the White House, the TPP has **excellent prospects for passage** even without trade promotion authority.

Slew of fights overwhelm the plan

Fawn Johnson, National Journal, 1/5/13, For Congress, A New Year But Same Problems, www.nationaljournal.com/daily/for-congress-a-new-year-but-same-problems-20140105

Obamacare. Immigration. Unemployment benefits. These were some of the biggest issues to occupy Congress last year—and they will again this year, with new fights already brewing as lawmakers return to Washington. With almost every politician eyeing the midterm elections in November, these and a handful of other issues will define many congressional campaigns. Here are five top issues to watch in Congress this year. Unemployment Insurance Democrats can smell Republicans' discomfort at the Dec. 28 expiration of unemployment benefits for people who have been out of a job for more than six months. The benefits were left on the cutting-room floor as part of the budget deal lawmakers reached in December, prompting an incessant outcry from Democrats and liberal groups. Liberals are losing no opportunity to put the blame for the unemployment cutoff squarely on Republicans, even though Democrats overwhelmingly sanctioned the budget-deal-sans-unemployment-benefits. "To the 1.3 million American losing benefits on Dec. 28, Merry Christmas from the GOP," said a TV ad produced by Americans United for Change, a liberal grassroots group, that ran on cable TV stations in the days leading up to the cutoff. Not to be too politically greedy, Rep. Chris Van Hollen, the ranking member on the House Budget Committee, is still hawking a proposal to extend the benefits for three months using revenues from the farm bill. Republicans rejected that option last month, but they might get another chance this month when the farm bill is back on the House floor. The Senate is also expected to take up a unemployment bill this week, but it is unclear how the legislation might fare in the House. Immigration It's true that the House GOP did everything possible to shut down the momentum created last year when the Senate passed a massive immigration bill that would create a 13-year path to citizenship for undocumented people. But then in December, House Speaker John Boehner did something that caught everyone's attention. He hired a true believer in a path to citizenship to run his immigration policy: Becky Tallent, former chief of staff for Sen. John McCain, R-Ariz., another true believer and the chief architect of the Senate bill. Tallent's addition to the House leadership team doesn't mean the chamber will pass immigration reform this year, but it means GOP leaders will try. And that's enough to start the political and grassroots wheels churning to create a white-hot issue this summer. Sen. Majority Whip Dick Durbin, D-Ill., is dubious that the House can finish a bill before August, which would signal almost certain death for chances of passage before November. But he says any activity on the issue would be encouraging. "Anything," he said late last month. "Any sign of life." Even the most conservative Republicans don't seem to mind the House's effort. "My theory is that we can win in 2014 without resolving it. We can't win in 2016 without resolving it," said Senate Minority Whip John Cornyn of Texas, an opinion leader among conservatives on immigration. Cornyn voted against the Senate bill, but he has more faith in the House's idea of tackling smaller immigration issues one at a time. "What I wish the Senate would do," he said, "is do it on a step-by-step basis." And if Cornyn has faith, maybe other staunch conservatives will follow. Minimum Wage Senate Health, Education, Labor, and Pensions Committee Chairman Tom Harkin, D-Iowa, is on a roll. He had two bills in a row produced from his committee pass on the Senate floor last fall—one to bar workplace discrimination against gays, lesbians, and transsexuals, and one tightening regulations on compounded drugs. Next up on the agenda is a minimum-wage increase. Other than unemployment benefits, Democrats perhaps have no better campaign issue than the minimum wage. It's an easy idea to grasp. The current federal minimum is $7.25 per hour, and 21 states have set a higher minimum wage. Harkin and Rep. George Miller, D-Calif., have introduced bills to raise the federal minimum to $10.10 per hour in three annual increments. Harkin is likely to move the bill through the committee in January or February, readying it for a Senate floor vote at Majority Leader Harry Reid's discretion. Republicans will probably object, citing the burden on small businesses and accusing Democrats of using the issue to take the spotlight away from problems with Obamacare. Democrats don't care. With public opinion largely in favor of a minimum-wage increase, they see nothing but potential. "I don't think this is going to be something where you see one vote and then it goes away," a Democratic Senate aide said. Obamacare Obama's signature health care law will continue to be major a talking point for both Republicans and Democrats in Congress. Democrats must defend the law, but Republicans are noting every single weakness exposed by the law's rollout and will be offering a host of proposals to change it in 2014. Of particular interest is a proposal that Sen. Ron Johnson dubs "freedom of choice in health care," which would allow people to retain whatever health insurance they have, even if it doesn't meet federal standards. "Why are health care costs going up so dramatically? It's because of the cost in all these mandated coverages, that's why," the Wisconsin Republican said. It's almost impossible to tell what impact, if any, Obamacare has had on health care costs, which are affected by a host of factors. The upward trajectory of costs has slowed in recent years after steadily rising for decades. But Johnson's point sounds good, particularly to people who are perfectly happy with their current health care plans but have to find new a one because the government deems their plan unacceptable. Debt Ceiling The debate over Obamacare wouldn't be nearly as interesting if it weren't for the looming debt-ceiling fight that will surface this spring—the last vestige of the budget blockages that have stymied lawmakers for the past three years. The recent budget deal created a path away from many of these fights, but it did not address the debt ceiling.

Won’t pass, not enough capital and Obama isn’t pushing

The Economist 1-1 (“Country Forecast World January 2014 - Part 12 of 14” lexis)

Prospects for a conclusion by year-end to negotiations over the Trans-Pacific Partnership (TPP), a free-trade agreement, look increasingly bleak. A key obstacle to an agreement is the need for the US administration to secure Trade Promotion Authority (TPA), which would allow trade legislation to be fast-tracked through Congress. However the US president, Barack Obama, is struggling to win political support for TPA. Without this, TPP talks-already in their 20th round-will make little further progress. The TPP negotiators' self-imposed end-2013 deadline for completing an agreement is therefore in jeopardy. As negotiators met in Salt Lake City in late November for the 20th round of TPP trade talks, it was with darkening clouds overhead. Just seven days before the meeting, the prospects for Mr Obama securing TPA had become bleaker as two separate groups of Republicans and Democrats in the House of Representatives sent letters to him expressing their opposition to TPA. In addition, although TPP negotiators have been at pains to stress how many chapters of the final agreement have already been "closed", a series of special inter-round sessions had to be convened to deal with those issues that are still far from decided. The TPP in brief The TPP is a US-led, 12-member regional free-trade agreement that, as its name indicates, includes countries on both sides of the Pacific, such as Australia, Singapore, Malaysia, Brunei, New Zealand, Mexico, Chile, Canada and Peru. Beyond the straightforward goal of further liberalising trade in the region, the US and other members are using the agreement for additional purposes as well. The US, for its part, wants to spread its rules and regulations, while some Asian countries see the TPP as a way to further cement US ties to Asia so that it continues to balance China's increasingly assertive presence. Others, like Vietnam and Japan, want to use the TPP to push through difficult domestic reforms under the guise of external pressure. Finally, and more generally, in the wake of the failure of the Doha Development Round, the agreement is viewed as a key measure of whether any appetite for ambitious trade deals still exists. All of this is to say that there is much at stake in the TPP, and were negotiations to fail, the consequences could be significant. No TPA, no TPP? To date, Mr Obama's administration has conducted its trade policy as if passage of TPA were all but assured-a mere technicality, at best. Since neither the TPP, nor the more recent Trans-Atlantic Trade and Investment Partnership (TTIP), may have progressed otherwise, and considering the more immediate domestic and foreign problems that Mr Obama has been facing, the strategy was understandable. Mr Obama's critics say otherwise, arguing that, once again, lofty rhetoric masked an unwillingness to make the compromises that greater trade liberalisation requires. Whatever understanding did exist among the US's negotiating partners must, of late, be giving way to serious concern, as signs of trouble have emerged in Washington. On November 12th a group of 23 House Republicans, mostly members of the ultra-Conservative Tea Party wing of the party, sent a letter to Mr Obama explaining why they would oppose TPA on constitutional grounds. This on its own might have been easily ignored as posturing by a noisy minority-the Tea Party is a loose group of small government, debt and deficit hawks that has, to date, mainly tried to play a spoiler role in Congressional votes. But the next day, a group of 151 House Democrats sent a letter of their own, saying that they too would oppose TPA on much the same grounds and also because the administration had failed to consult Congress properly as negotiations progressed. While, together, this "unholy alliance" of 174 Tea Party Republicans and trade-sceptic Democrats may lack the votes to prevent the passage of TPA through the House of Representatives, it is nevertheless a worrying sign about the near-term prospects for Mr Obama. A quick glance back at previous Congressional fights over TPA, or Fast Track Authority, as it was once called, would have shown the current government that nothing was assured. In the 1990s the then president, Bill Clinton, tried and failed twice to obtain TPA. George W Bush only barely squeaked approval by the House in 2002, and that was in the aftermath of the terrorist attacks of September 11th 2001, when his approval ratings were at an all-time high and completing international trade agreements could more easily be presented as a national security issue than it can now. The worst case For these reasons, it is time to begin considering the possibility that Mr Obama may not receive TPA in the near future, and perhaps not even before the end of his presidency in January 2017. Many analysts, and not least other TPP member countries, want to believe that US politicians will always stop just short of the precipice, as they have done twice now in debate over the debt ceiling, which has fast become shorthand for empty brinksmanship. For members of Congress, though, allowing the US to default on its debt is a very different proposition politically than refusing to grant Mr Obama TPA. Whereas public opinion polls consistently showed a majority of voters opposing a default, support for trade has been gradually eroding. Many politicians, in other words, need not fear being penalised at the polls for failure to back TPA and could, in many cases, actually be rewarded for their opposition. What would it mean for the TPP were Mr Obama to fail to win TPA? The worst-case scenario would, of course, be that the negotiations ultimately fall apart. The theory behind TPA is that it provides US negotiating partners with assurances that the agreement they sign with the US will not be subject to the whims of the myriad interests, big and small, that the US Congress represents. Without TPA, there is no incentive for these foreign-trade partners to make any meaningful concessions, and without meaningful concessions-the give-and-take that any trade negotiation requires-there cannot, in the end, be any agreement. By this thinking, continuing TPP negotiations becomes a pointless endeavour for the 11 other countries involved. The more likely scenario is that the negotiations drag on, without falling apart, for as long as it takes the US president to gain TPA. This could be a long time away, however. The start of campaigning for the 2014 mid-term elections is nearing and trade is rarely, if ever, a vote winner. Once the 2014 mid-terms are over, the next presidential election becomes far less distant. Being a second-term president, Mr Obama could, during this period, push hard for TPA at the expense of other issues and for legacy purposes, but by then he may lack the political capital to do much at all, let alone get a contentious TPA bill through a hyper-partisan Congress.

#### PC fails

Hirsh 13 – National Journal chief correspondent, citing various political scientists

[Michael, former Newsweek senior correspondent, "There’s No Such Thing as Political Capital," National Journal, 2-9-13, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207, accessed 2-8-13, mss]

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of **this** talk **will have** no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The **political tectonics** have **shift**ed **dramatically** in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, **political capital** is a concept that **misleads** far more than it enlightens. **It is** **distortionary**. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “**Winning wins.”** In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some **political scientists** **who study** the elusive calculus of **how to pass legislation** and run successful presidencies **say** that **political capital is**, at best, **an empty concept**, and that **almost nothing in** the **academic literature** successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. **Winning** on one issue often **changes the** **calculation** for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where **the conventional wisdom is that president is not going to get what he wants**, and [they]he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. **It’s a bandwagon effect**.” ALL THE WAY WITH LBJ Sometimes, a clever practitioner of power can get more done just because [they’re]he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?” Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

#### Iran thumps

Jim Lobe, Inter Press Service 12/27, Iran sanctions bill: Big test of Israel lobby power, http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046

This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.

The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.

The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.

To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.

The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.

The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”

The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.

Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.

Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.

Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.

To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.

Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.

The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).

The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.

That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

**Plan boosts Obama’s capital**

Douglas **Kriner 10**, Assistant Profess of Political Science at Boston University, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 59-60

Presidents and politicos alike have long recognized Congress's ability to reduce the political costs that the White House risks incurring by pursuing a major military initiative. While declarations of war are all but extinct in the contemporary period, Congress has repeatedly moved to authorize presidential military deployments and consequently to tie its own institutional prestige to the conduct and ultimate success of a military campaign. Such authorizing legislation, even if it fails to pass both chambers, creates a sense of **shared legislative-executive responsibility** for a military action's success and provides the president with **considerable political support** for his chosen policy course.34 Indeed, the desire for this political cover—and not for the constitutional sanction a congressional authorization affords—has historically motivated presidents to seek Congress's blessing for military endeavors. For example, both the elder and younger Bush requested legislative approval for their wars against Iraq, while assiduously maintaining that they possessed sufficient independent authority as commander in chief to order the invasions unilaterally.35 This fundamental tension is readily apparent in the elder Bush's signing statement to HJ Res 77, which authorized military action against Saddam Hussein in January of 1991. While the president expressed his gratitude for the statement of congressional support, he insisted that the resolution was not needed to authorize military action in Iraq. "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."36

Not pushing

Chicago Tribune 12-30 (“Editorial: Obama needs fast-track trade authority”)

The president made no push for TPA in his first four years. Recently, he has spoken out about the need for it. But he has not twisted arms on Capitol Hill. If TPA is the high priority that it should be for his administration, Obama needs to demand it from members of both parties. Along with immigration reform, free-trade deals could be Obama's best hope for a positive legacy in his second term. Within months the White House hopes to finish talks on a proposed Trans-Pacific Partnership with a group of Asia-Pacific nations. Talks with the European Union on the planned Transatlantic Trade and Investment Partnership are progressing too. Those deals would eliminate barriers and promote economic activity between the U.S. and key allies. The upside is huge: Billions of dollars in new business would be generated if these pacts come to pass. Yet given the special interests that oppose free trade, neither deal stands much of a chance in Congress without TPA. Consider farm tariffs, one of the most frustrating roadblocks to any free-trade pact with Europe or Asia. The agriculture lobby here and abroad has long succeeded in imposing some of the least competitive public policies of any industry. Although farm protectionism hurts the vast majority of the world's citizens, standing up to clout-heavy constituencies such as U.S. sugar magnates requires extraordinary political courage. TPA is essential for overcoming the inevitable fight against vested interests that are determined to advance themselves at the expense of the nation's good. Federal lawmakers and the president have to make their case with much more gusto than we have seen so far. Congress could OK a Trade Promotion Authority bill in the first few months of 2014. But that won't happen without leadership on Capitol Hill and, especially, from the White House. Now's the time.

#### Obamacare thumps

Young 12/1/13 (JT Contributor to Forbes Magazine, "George W. Bush's Hurricane Kartrina Has Nothing Politically On Obama's ACA")

The Affordable Care Act isn’t Obama’s political version of Hurricane Katrina, it’s worse. Although strikingly similar from a political standpoint, Obama’s ownership and depleted political capital make this threat far greater to his presidency. If realized, Obama’s would become the latest administration to discover that second terms have become amazingly fickle things. ¶ Upon winning a second term, a president appears to have both validation and a mandate. However, even under the best of circumstances, lame duck status comes quickly in a nation forever hurrying to move on. Recently, second-term administrations have had anything but the best of circumstances.¶ America’s last five second-term administrations – Bush II, Clinton, Reagan, Nixon, and Johnson – each had major crises that hurt, what had started so positively.¶ Late in August 2005, Hurricane Katrina battered New Orleans. Flood waters killed many, left homeless hundreds of thousands, and gave the nation days’ worth of shocking pictures that seemed to come from another country. Fairly or unfairly, the administration’s response was deemed slow and incompetent. While New Orleans slowly recovered, George W. Bush never seemed to.¶ Now, at almost the same point in his second term, the ACA looks to be DOA, and its disastrous rollout looks to engulf this administration.¶ As Katrina did to the previous administration, the problems of the ACA’s rollout seem to have somehow caught this administration unaware and unable to respond. While Katrina had a greater severity in human terms, the ACA’s failed rollout may have greater severity in political terms.¶ First, its failure is expansive. Rather than confined to one area of the country – with the rest of the nation merely observing, as with Katrina – the ACA’s impact is nationwide.¶ Nor is the ACA’s failure limited to one thing. More than just a failed web system, it has increased premiums, cancelled policies, and shockingly low sign-ups.¶ And its problems may well get worse, once patients, medical procedures, and billing are involved. If the plane has this many problems on takeoff, what will happen once it’s airborne?¶ However one views the response, the Bush administration had no hand in Katrina itself. Contrastingly, the ACA is all Obama – to the extent that he embraced the name “Obamacare.” And Obamacare has remained the starkest of partisan issues from passage until today. Republicans opposed it then, and oppose it now – just having shut the government down over it.¶ Unlike Bush, who had several tax cuts, education reform, and successful military actions in Afghanistan and Iraq, Obama has no surplus of positive accomplishments to offset the ACA’s rollout. This is THE accomplishment for this president.¶ Obama did not come into the ACA’s rollout with political capital to spare. Obama is the first president, since FDR in 1944, to win reelection by a smaller popular vote percentage than in his previous election. And he is the first president (since such records have been kept), to see his popular vote percentage fall, while winning reelection to a second term.¶ Now well into his fifth year in office, things have not improved. Gallup recently released a comparison of two-term presidents at the point where Obama is now. Obama’s 44.5% approval rating was ahead of Nixon (at 31.8% with Watergate), Johnson (at 41.8% with Vietnam), and GW Bush (at 43.9% with Afghanistan, Iraq, and Katrina). However, Obama did not have those deeply negative events pushing his approval rating down. Rather, he was already there, despite being widely acknowledged to have just won a high-profile fiscal fight.

#### Gitmo release cost pc

Rosenberg 1/2 (Carol Rosenberg - The Miami Herald/McClatchy-Tribune, “Guantanamo releases rose at end of '13”, January 2, 2014)

MIAMI- In rapid succession, the U.S. in December sent Guantanamo prisoners home to Algeria, Saudi Arabia and Sudan, then capped the year with a "significant milestone" deal that resettled three long-held Uighur captives in Slovakia. A year that began with 166 prisoners at Guantanamo, more than 100 of whom would join a hunger strike that captured President Barack Obama's attention, ended with 11 men fewer. For those who recall the George W. Bush-era Guantanamo policies that sent prisoners home by the planeload, this thinning of the captive population to 155 does not suggest the Obama administration will realize the president's ambition of closing the detention center anytime soon. But, taken as a whole, the sudden surge served to illustrate that the Defense and State departments had breathed life into their long-stalled approach of trying to empty the prison on a case-by-case basis, fashioning specific solutions for each individual captive. The December transfers represented a variety of solutions \_ involuntary transfer of two Algerians, a path home through the courts for two Sudanese men and a fresh look at the files of two Saudis. On Tuesday, Pentagon spokesman Rear Adm. John Kirby credited the work of two new special envoys for the deal that sent the three Uighurs to Slovakia. He called it "a significant milestone in our effort to close the detention facility at Guantanamo Bay." Left unsaid was that the teams had earlier in the year sealed a deal for the Uighurs to get safe haven in Costa Rica, according to U.S. government sources, only to see the offer suddenly withdrawn in September. But in hailing the Slovaks' "humanitarian gesture," Kirby highlighted that the State Department may be back in the third-country resettlement business. That strategy stalled in Obama's first term as closure allies bristled over congressional restrictions that kept Guantanamo detainees off U.S. soil. At Guantanamo, nearly half the prisoners \_ 76 of 155 \_ are cleared for transfer with security assurances. But many of them come from Middle East hotspots, mostly Yemen but also Syria \_ places too risky for release in the opinions of the Obama and Bush administrations. Human Rights Watch counterterrorism counsel Andrea Prasow, who has worked on the Guantanamo issue for years in Washington, D.C., credits this year's sweeping prison hunger strike for a shifting political landscape that renewed the transfers. Reports of more than 100 prisoners refusing to eat, forcing U.S. Navy medics to re-nourish them with tube feedings, refocused Obama's attention on the Guantanamo problem. "I don't want these individuals to die," he said in April. "Obviously, the Pentagon is trying to manage the situation as best as they can. But I think all of us should reflect on why exactly are we doing this?" Then, in a May speech at the National Defense University, he expressed sympathy for troops and hunger strikers alike and ordered the creation of the two closer positions designed to work on resolving each captive's case. "I think the hunger strike changed everything," said Prasow. "It made the president pay attention and remember his pledge and decide that he was able to expend some political capital and follow through." One example was Congress' recent, slight loosening of restrictions on transfers to foreign countries. Now detainees can, in some instances, be sent to countries on the U.S. State Sponsors of Terrorism list, and transfers to nations where earlier freed detainees are defined as "recidivists" are no longer completely taboo. "I think the Congress shifted in part because it became clear that the president was serious," Prasow added.

## K

Debates about legal questions of national security inculcate agency and decision making

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

**Legal restraints work – alternatives would result in violence**

William E. **Scheuerman 6**, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants

#### No risk of infinite intervention

**Brooks 12**, Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51

temptation. For many advocates of retrenchment, the mere possession of peerless, globe-girdling military capabilities leads inexorably to a dangerous expansion of U.S. definitions of national interest that then drag the country into expensive wars. 64 For example, sustaining ramified, long-standing alliances such as NATO leads to mission creep: the search for new roles to keep the alliance alive. Hence, critics allege that NATO’s need to “go out of area or out of business” led to reckless expansion that alienated Russia and then to a heedless broadening of interests to encompass interventions such as those in Bosnia, Kosovo, and Libya. In addition, peerless military power creates the temptation to seek total, non-Clausewitzian solutions to security problems, as allegedly occurred in Iraq and Afghanistan. 65 Only a country in possession of such awesome military power and facing no serious geopolitical rival would fail to be satisfied with partial solutions such as containment and instead embark on wild schemes of democracy building in such unlikely places. In addition, critics contend, the United States’ outsized military creates a sense of obligation to use it if it might do good, even in cases where no U.S. interests are engaged. As Madeleine Albright famously asked Colin Powell, “What’s the point of having this superb military you’re always talking about, if we can’t use it?” Undoubtedly, possessing global military intervention capacity expands opportunities to use force. If it were truly to “come home,” the United States would be tying itself to the mast like Ulysses, rendering itself incapable of succumbing to temptation. Any defense of deep engagement must acknowledge that it increases the opportunity and thus the logical probability of U.S. use of force compared to a grand strategy of true strategic disengagement. Of course, if the alternative to deep engagement is an over-the-horizon intervention stance, then the temptation risk would persist after retrenchment. The main problem with the interest expansion argument, however, is that it essentially boils down to one case: Iraq. Sixty-seven percent of all the casualties and 64 percent of all the budget costs of all the wars the United States has fought since 1990 were caused by that war. Twenty-seven percent of the causalities and 26 percent of the costs were related to Operation Enduring Freedom in Afghanistan. All the other interventions—the 1990–91 Persian Gulf War, the subsequent airstrike campaigns in Iraq, Somalia, Bosnia, Haiti, Kosovo, Libya, and so on—account for 3 percent of the casualties and 10 percent of the costs. 66 Iraq is the outlier not only in terms of its human and material cost, but also in terms of the degree to which the overall burden was shouldered by the United States alone. As Beckley has shown, in the other interventions allies either spent more than the United States, suffered greater relative casualties, or both. In the 1990–91 Persian Gulf War, for example, the United States ranked fourth in overall casualties (measured relative to population size) and fourth in total expenditures (relative to GDP). In Bosnia, European Union (EU) budget outlays and personnel deployments ultimately swamped those of the United States as the Europeans took over postconflict peacebuilding operations. In Kosovo, the United States suffered one combat fatality, the sole loss in the whole operation, and it ranked sixth in relative monetary contribution. In Afghanistan, the United States is the number one financial contributor (it achieved that status only after the 2010 surge), but its relative combat losses rank fifth. 67 In short, the interest expansion argument would look much different without Iraq in the picture. There would be no evidence for the United States shouldering a disproportionate share of the burden, and the overall pattern of intervention would look “unrestrained” only in terms of frequency, not cost, with the debate hinging on whether the surge in Afghanistan was recklessly unrestrained. 68 How emblematic of the deep engagement strategy is the U.S. experience in Iraq? The strategy’s supporters insist that Iraq was a Bush/neoconservative aberration; certainly, there are many supporters of deep engagement who strongly opposed the war, most notably Barack Obama. Against this view, opponents claim that it or something close to it was inevitable given the grand strategy. Regardless, the more important question is whether continuing the current grand strategy condemns the United States to more such wars. The Cold War experience suggests a negative answer. After the United States suffered a major disaster in Indochina (to be sure, dwarfing Iraq in its human toll), it responded by waging the rest of the Cold War using proxies and highly limited interventions. Nothing changed in the basic structure of the international system, and U.S. military power recovered by the 1980s, yet the United States never again undertook a large expeditionary operation until after the Cold War had ended. All indications are that Iraq has generated a similar effect for the post–Cold War era. If there is an Obama doctrine, Dominic Tierney argues, it can be reduced to “No More Iraqs.” 69 Moreover, the president’s thinking is reflected in the Defense Department’s current strategic guidance, which asserts that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations.” 70 Those developments in Washington are also part of a wider rejection of the Iraq experience across the American body politic, which political scientist John Mueller dubbed the “Iraq Syndrome.” 71 Retrenchment advocates would need to present much more argumentation and evidence to support their pessimism on this subject.

#### Squo heg is bad – plan is key to restrained force

Drezner 05 [Daniel, Gregg Easterbrook, Associate Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, “War, and the dangers of extrapolation,” may 25]

Daily explosions in Iraq, massacres in Sudan, the Koreas smakestaring at each other through artillery barrels, a Hobbesian war of all against all in eastern Congo--combat plagues human society as it has, perhaps, since our distant forebears realized that a tree limb could be used as a club. But here is something you would never guess from watching the news: War has entered a cycle of decline. Combat in Iraq and in a few other places is an exception to a significant global trend that has gone nearly unnoticed--namely that, for about 15 years, there have been steadily fewer armed conflicts worldwide. In fact, it is possible that a person's chance of dying because of war has, in the last decade or more, become the lowest in human history. Is Easterbrook right? He has a few more paragraphs on the numbers: The University of Maryland studies find the number of wars and armed conflicts worldwide peaked in 1991 at 51, which may represent the most wars happening simultaneously at any point in history. Since 1991, the number has fallen steadily. There were 26 armed conflicts in 2000 and 25 in 2002, even after the Al Qaeda attack on the United States and the U.S. counterattack against Afghanistan. By 2004, Marshall and Gurr's latest study shows, the number of armed conflicts in the world had declined to 20, even after the invasion of Iraq. All told, there were less than half as many wars in 2004 as there were in 1991. Marshall and Gurr also have a second ranking, gauging the magnitude of fighting. This section of the report is more subjective. Everyone agrees that the worst moment for human conflict was World War II; but how to rank, say, the current separatist fighting in Indonesia versus, say, the Algerian war of independence is more speculative. Nevertheless, the Peace and Conflict studies name 1991 as the peak post-World War II year for totality of global fighting, giving that year a ranking of 179 on a scale that rates the extent and destructiveness of combat. By 2000, in spite of war in the Balkans and genocide in Rwanda, the number had fallen to 97; by 2002 to 81; and, at the end of 2004, it stood at 65. This suggests the extent andintensity of global combat is now less than half what it was 15 years ago. Easterbrook spends the rest of the essay postulating the causes of this -- the decline in great power war, the spread of democracies, the growth of economic interdependence, and even the peacekeeping capabilities of the United Nations. Easterbrook makes a lot of good points -- most people are genuinely shocked when they are told that even in a post-9/11 climate, there has been a steady and persistent decline in wars and deaths from wars. That said, what bothers me in the piece is what Easterbrook leaves out. First, he neglects to mention the biggest reason for why war is on the decline -- there's a global hegemon called the United States right now. Easterbrook acknowledges that "the most powerful factor must be the end of the cold war" but he doesn't understand why it's the most powerful factor. Elsewhere in the piece he talks about the growing comity among the great powers, without discussing the elephant in the room: the reason the "great powers" get along is that the United States is much, much more powerful than anyone else. If you quantify power only by relative military capabilities, the U.S. is a great power, there are maybe ten or so middle powers, and then there are a lot of mosquitoes.[If the U.S. is so powerful, why can't it subdue the Iraqi insurgency?--ed. Power is a relative measure -- the U.S. might be having difficulties, but no other country in the world would have fewer problems.] Joshua Goldstein, who knows a thing or two about this phenomenon, made this clear in a Christian Science Monitor op-ed three years ago: We probably owe this lull to the end of the cold war, and to a unipolar world order with a single superpower to impose its will in places like Kuwait, Serbia, and Afghanistan. The emerging world order is not exactly benign – Sept. 11 comes to mind – and Pax Americana delivers neither justice nor harmony to the corners of the earth. But a unipolar world is inherently more peaceful than the bipolar one where two superpowers fueled rival armies around the world. The long-delayed "peace dividend" has arrived, like a tax refund check long lost in the mail. The difference in language between Goldstein and Easterbrook highlights my second problem with "The End of War?" Goldstein rightly refers to the past fifteen years as a "lull" -- a temporary reduction in war and war-related death. The flip side of U.S. hegemony being responsible for the reduction of armed conflict is what would happen if U.S. hegemony were to ever fade away. Easterbrook focuses on the trends that suggest an ever-decreasing amount of armed conflict -- and I hope he's right. But I'm enough of a realist to know that if the U.S. should find its primacy challenged by, say, a really populous non-democratic country on the other side of the Pacific Ocean, all best about the utility of economic interdependence, U.N. peacekeeping, and the spread of democracy are right out the window. UPDATE: To respond to a few thoughts posted by the commenters: 1) To spell things out a bit more clearly -- U.S. hegemony important to the reduction of conflict in two ways. First, U.S. power can act as a powerful if imperfect constraint on pairs of enduring rivals (Greece-Turkey, India-Pakistan) that contemplate war on a regular basis. It can't stop every conflict, but it can blunt a lot of them. Second, and more important to Easterbrook's thesis, U.S. supremacy in conventional military affairs prevents other middle-range states -- China, Russia, India, Great Britain, France, etc. -- from challenging the U.S. or each other in a war. It would be suicide for anyone to fight a war with the U.S., and if any of these countries waged a war with each other, the prospect of U.S. intervention would be equally daunting. 2) Many commenters think what's important is the number of casualties, not the number of wars. This is tricky, however, because of the changing nature of warfighting and medical science. Compared to, say, World War II, wars now have far less of an effect on civilian populations. Furthermore, more people survive combat injuries because of improvements in medicine. These are both salutory trends, but I dunno if that means that war as a tool of statecraft is over -- if anything, it makes the use of force potentially more attractive, because of the minimization of spillover effects.

Moore 04 – Dir. Center for Security Law @ University of Virginia, 7-time Presidential appointee, & Honorary Editor of the American Journal of International Law, Solving the War Puzzle: Beyond the Democratic Peace, John Norton Moore, pages 41-2.

If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional "causes" of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty or social injustice, competition for resources, incidents and accidents, greed, fear, and perceptions of "honor," or many other such factors. Such factors may well play a role in motivating aggression or in serving as a means for generating fear and manipulating public opinion. The reality, however, is that while some of these may have more potential to contribute to war than others, there may well be an infinite set of motivating factors, or human wants, motivating aggression. It is not the independent existence of such motivating factors for war but rather the circumstances permitting or encouraging high risk decisions leading to war that is the key to more effectively controlling war. And the same may also be true of democide. The early focus in the Rwanda slaughter on "ethnic conflict," as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents.I1 Certainly if we were able to press a button and end poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of robust correlation with any of these "traditional" causes of war as is reflected in the "democratic peace." Further, given the difficulties in overcoming many of these social problems, an approach to war exclusively dependent on their solution may be to doom us to war for generations to come. A useful framework in thinking about the war puzzle is provided in the Kenneth Waltz classic Man, the State, and War,12 first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or "images," of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high risk behavior leading to major war. In this, the "democratic peace" is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision for war, is also critical when government structures do not restrain such high risk behavior on their own. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant. I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who may be disposed to aggressive military adventures and in creating incentive structures predisposing to high risk behavior. We should keep before us, however, the possibility, indeed probability, that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders, and systematically applying other findings of cognitive psychology, as we assess the likelihood of aggression and levels of necessary deterrence in context. A post-Gulf War edition of Gordon Craig and Alexander George's classic, Force and Statecraft,13 presents an important discussion of the inability of the pre-war coercive diplomacy effort to get Saddam Hussein to withdraw from Kuwait without war.14 This discussion, by two of the recognized masters of deterrence theory, reminds us of the many important psychological and other factors operating at the individual level of analysis that may well have been crucial in that failure to get Hussein to withdraw without war. We should also remember that nondemocracies can have differences between leaders as to the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, we should also keep before us that major international war is predominantly and critically an interaction, or synergy, of certain characteristics at levels two and three, specifically an absence of democracy and an absence of effective deterrence. Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk.I5 VI Testing the Hypothesis Theory without truth is but costly entertainment. HYPOTHESES, OR PARADIGMS, are useful if they reflect the real world better than previously held paradigms. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. No general construct will fit all cases even in the restricted category of "major interstate war"; there are simply too many variables. We should insist, however, on testing against the real world and on results that suggest enhanced usefulness over other constructs. In testing the hypothesis, we can test it for consistency with major wars; that is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence?' And although it is by itself not going to prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in nonwar settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy; that is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

#### Extinction outweighs

Bernstein ‘2

(Richard J., Vera List Prof. Phil. – New School for Social Research, “Radical Evil: A Philosophical Interrogation”, p. 188-192)

There is a basic value inherent in **organic** being, a basic affirmation, "The Yes' of Life" (IR 81). 15 "The self-affirmation of being becomes emphatic in the opposition of life to death. Life is the explicit confrontation of being with not-being. . . . The 'yes' of all striving is here sharpened by the active `no' to not-being" (IR 81-2). Furthermore — and this is the crucial point for Jonas — this affirmation of life that is in all organic being has a binding obligatory force upon human beings. This blindly self-enacting "yes" gains obligating force in the seeing freedom of man, who as the supreme outcome of nature's purposive labor is no longer its automatic executor but, with the power obtained from knowledge, can become its destroyer as well. He must adopt the "yes" into his will and impose the "no" to not-being on his power. But precisely this transition from willing to obligation is the critical point of moral theory at which attempts at laying a foundation for it come so easily to grief. Why does now, in man, that become a duty which hitherto "being" itself took care of through all individual willings? (IR 82). We discover here the transition from is to "ought" — from the self-affirmation of life to the binding obligation of human beings to preserve life not only for the present but also for the future. But why do we need a new ethics? The subtitle of The Imperative of Responsibility — In Search of an Ethics for the Technological Age — indicates why we need a new ethics. Modern technology has transformed the nature and consequences of human action so radically that the underlying premises of traditional ethics are no longer valid. For the first time in history human beings possess the knowledge and the power to destroy life on this planet, including human life. Not only is there the new possibility of total nuclear disaster; there are the even more invidious and threatening possibilities that result from the unconstrained use of technologies that can destroy the environment required for life. The major transformation brought about by modern technology is that the consequences of our actions frequently exceed by far anything we can envision. Jonas was one of the first philosophers to warn us about the unprecedented ethical and political problems that arise with the rapid development of biotechnology. He claimed that this was happening at a time when there was an "ethical vacuum," when there did not seem to be any effective ethical principles to limit ot guide our ethical decisions. In the name of scientific and technological "progress," there is a relentless pressure to adopt a stance where virtually anything is permissible, includ-ing transforming the genetic structure of human beings, as long as it is "freely chosen." We need, Jonas argued, a new categorical imperative that might be formulated as follows: "Act so that the effects of your action are compatible with the permanence of genuine human life"; or expressed negatively: "Act so that the effects of your action are not destructive of the future possibility of such a life"; or simply: "Do not compromise **the conditions for** an indefinite continuation of humanity on earth**"; or again turned positive:** "In your present choices, include the future wholeness of Man among the objects of your will."

#### Turns the K - war leads to dehumanization and social exclusion

Maiese, 03 [Michelle, research staff at the Conflict Research Consortium, July, The Beyond Intractability Project: Guy Burgess and Heidi Burgess” http://www.beyondintractability.org/essay/dehumanization/]

Dehumanization is a psychological process whereby opponents view each other as less than human and thus not deserving of moral consideration. Jews in the eyes of Nazis and Tutsis in the eyes of Hutus (in the Rwandan genocide) are but two examples. Protracted conflict strains relationships and makes it difficult for parties to recognize that they are part of a shared human community. Such conditions often lead to feelings of intense hatred and alienation among conflicting parties. The more severe the conflict, the more the psychological distance between groups will widen. Eventually, this can result in moral exclusion. Those excluded are typically viewed as inferior, evil, or criminal.[1] We typically think that all people have some basic human rights that should not be violated. Innocent people should not be murdered, raped, or tortured. Rather, international law suggests that they should be treated justly and fairly, with dignity and respect. They deserve to have their basic needs met, and to have some freedom to make autonomous decisions. In times of war, parties must take care to protect the lives of innocent civilians on the opposing side. Even those guilty of breaking the law should receive a fair trial, and should not be subject to any sort of cruel or unusual punishment. However, for individuals viewed as outside the scope of morality and justice, "the concepts of deserving basic needs and fair treatment do not apply and can seem irrelevant."[2] Any harm that befalls such individuals seems warranted, and perhaps even morally justified. Those excluded from the scope of morality are typically perceived as psychologically distant, expendable, and deserving of treatment that would not be acceptable for those included in one's moral community. Common criteria for exclusion include ideology, skin color, and cognitive capacity. We typically dehumanize those whom we perceive as a threat to our well-being or values.[3] Psychologically, it is necessary to categorize one's enemy as sub-human in order to legitimize increased violence or justify the violation of basic human rights. Moral exclusion reduces restraints against harming or exploiting certain groups of people. In severe cases, dehumanization makes the violation of generally accepted norms of behavior regarding one's fellow man seem reasonable, or even necessary

## 2AC Warfighting

#### No risk of terrorism

**Mearsheimer 1/2** (John J. Mearsheimer, Does he need equals?, “America Unhinged”, <http://nationalinterest.org/article/america-unhinged-9639>, January-February 2014)

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the UnitedStates in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled. What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chancesof that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the UnitedStates already has detailed plans to deal with that highly unlikely contingency. Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

#### Warfighting doesn’t apply to OCO – cyber flexibility leads to false attribution – draws us into conflict

Dycus ’10 (Stephen Dycus, Professor Stephen Dycus is an internationally recognized authority on national security law and environmental law. The courses he has taught at Vermont Law School include Public International Law, National Security Law, Estates, Property, and Water Law. He was founding chair, National Security Law Section, Association of American Law Schools. Professor Dycus is the lead author of National Security Law (the field's leading casebook) and Counterterrorism Law, and he was founding co-editor in chief of the Journal of National Security Law & Policy, “Congress’s Role in Cyber Warfare”, Pg 157, September 29, 2010)

Our experience with nuclear weapons may point to needed reforms. Since the beginning of the Cold War, the United States has had a fairly clear nuclear policy (albeit one that deliberately includes an element of ambiguity) – one known generally to Congress, the American public, and potential enemies. Congress has approved or disapproved the purchase of the weapons and delivery systems. It has been briefed on the policy, and it has debated that policy vigorously. While Congress has not articulated U.S. nuclear policy in any coherent form, it has collaborated closely with the executive branch in the development and execution of that policy. Cyber weapons bear a striking resemblance to nuclear weapons in some important ways. An enemy’s cyber attack would, like a nuclear strike, probably come without a clear warning. There are as yet no reliable defenses against either a cyber attack or a nuclear attack. Collateral damage from a nuclear attack would almost certainly be very extensive and 48 would linger for an extended period. The direct and indirect effects of a cyber attack, while different in kind and degree, still could be widespread 49 and indiscriminate. In other ways, cyber weapons are critically different from their nuclear counterparts. For one thing, the time frame for response to a cyber attack might be much narrower. A nuclear weapon delivered by a land-based ICBM could take 30 minutes to reach its target. An electronic attack would arrive instantaneously, and leave no time to consult with or even inform anyone outside the executive branch before launching a counterstrike, if that were U.S. policy. What most distinguishes digital warfare, however, is the potential difficulty in identifying the source of a cyber attack. It is always possible, of course, that an enemy might covertly deliver a nuclear device to the U.S. homeland in a shipping container or a Cessna. But the apparent ease with which a cyber attack may be carried out without attribution could make it impossible to fight back at all. If an attacker made it appear that the source was an innocent neutral state or perhaps another enemy of the attacker, a misdirected U.S. response might provoke a wider conflict. The potential difficulty in tracking the source also makes a policy of deterrence based on a threat of retaliation far less credible.

**Oversight stops arbitrariness but not flex**

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "strangled by law," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted cost-benefit analysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, every action is an inaction; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the real tradeoffs in the war on terror do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's failure to take scarcity of resources and opportunity costs into account. What secret and unaccountable executive action made possible, it turns out, was not flexible adaptation to the demands of the situation but rather profligacy, arbitrariness and a failure to set priorities in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a weak grasp of the elementary distinction between flexibility and arbitrariness.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground rules for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much arbitrary executive action in the United States' armed struggle with al Qaeda, potentially wasting scarce resources that could be more usefully deployed in another way? And the answer to this second question is obviously "yes.".

**Zero data supports the resolve or credibility thesis**

Jonathan Mercer 13, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics, 5/13/13, “Bad Reputation,” <http://www.foreignaffairs.com/articles/136577/jonathan-mercer/bad-reputation>

Since then, the debate about what to do in Syria has been sidetracked by discussions of how central reputation is to deterrence, and whether protecting it is worth going to war.

There are two ways to answer those questions: through evidence and through logic. The first approach is easy. Do leaders assume that other leaders who have been irresolute in the past will be irresolute in the future and that, therefore, their threats are not credible? No; broad and deep evidence dispels that notion. In studies of the various political crises leading up to World War I and of those before and during the Korean War, I found that leaders did indeed worry about their reputations. But their worries were often mistaken.

For example, when North Korea attacked South Korea in 1950, U.S. Secretary of State Dean Acheson was certain that America’s credibility was on the line. He believed that the United States’ allies in the West were in a state of “near-panic, as they watched to see whether the United States would act.” He was wrong. When one British cabinet secretary remarked to British Prime Minister Clement Attlee that Korea was “a rather distant obligation,” Attlee responded, “Distant -- yes, but nonetheless an obligation.” For their part, the French were indeed worried, but not because they doubted U.S. credibility. Instead, they feared that American resolve would lead to a major war over a strategically inconsequential piece of territory. Later, once the war was underway, Acheson feared that Chinese leaders thought the United States was “too feeble or hesitant to make a genuine stand,” as the CIA put it, and could therefore “be bullied or bluffed into backing down before Communist might.” In fact, Mao thought no such thing. He believed that the Americans intended to destroy his revolution, perhaps with nuclear weapons.

Similarly, Ted Hopf, a professor of political science at the National University of Singapore, has found that the Soviet Union did not think the United States was irresolute for abandoning Vietnam; instead, Soviet officials were surprised that Americans would sacrifice so much for something the Soviets viewed as tangential to U.S. interests. And, in his study of Cold War showdowns, Dartmouth College professor Daryl Press found reputation to have been unimportant. During the Cuban Missile Crisis, the Soviets threatened to attack Berlin in response to any American use of force against Cuba; despite a long record of Soviet bluff and bluster over Berlin, policymakers in the United States took these threats seriously. As the record shows, reputations do not matter.

#### Obama has no credibility now – only a risk of the link turn

Rachman ’13 (Gideon Rachman, “Obama and the crumbling of a liberal fantasy hero”, <http://search.proquest.com.go.libproxy.wfubmc.edu/docview/1373205506>, July 1, 2013)

It has taken a long time, but the world's fantasies about Barack Obama are finally crumbling. In Europe, once the headquarters of the global cult of Obama, the disillusionment is particularly bitter. Monday's newspapers were full of savage quotes about the perfidy of the Obama-led US. Der Spiegel, the German magazine that alleged that America's National Security Agency has bugged the EU's offices, thundered that "the NSA's totalitarian ambition . . . affects us all . . . A constitutional state cannot allow it. None of us can allow it." President Franois Hollande of France has demanded that the alleged spying stop immediately. Le Monde, Mr Hollande's home-town newspaper, has even suggested that the EU should consider giving political asylum to Edward Snowden, the NSA whistleblower. But if liberals wanted to compile a list of perfidious acts by the Obama administration, the case of the bugged EU fax machine should probably come low down the list. More important would be the broken promise to close the Guantnamo detention centre and - above all - the massive expansion of the use of drone strikes to kill suspected terrorists in Pakistan, Yemen and elsewhere, It has gradually dawned on President Obama's foreign fan club that their erstwhile hero is using methods that would be bitterly denounced if he were a white Republican. As Hakan Altinay, a Turkish academic, complained to me last week: "Obama talks like the president of the American Civil Liberties Union but he acts like Dick Cheney." It is not just Mr Obama's record on security issues that disappoints the likes of Mr Altinay. Liberals in Turkey, Egypt, Russia, Iran and elsewhere complain that the US president has been far too hesitant about condemning human rights abuses in their countries. Or to adapt Mr Altinay's complaint: when it comes to foreign policy, Mr Obama campaigned with the human rights rhetoric of Jimmy Carter but has governed like Henry Kissinger.

## 2AC ESR CP

#### Congress is key to WPR cred – executive trust deficit - PPD20, Stuxnet, and NSA Spying poisoned the well, contradictory actions on cyber mean Obama isn’t credible

**Drezner 13**, Dan, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University and a senior editor at The National Interest, “I’m Cyber Confused,” February 4th, http://drezner.foreignpolicy.com/posts/2013/02/04/im\_cyber\_confused

The language and analogies being used by officials in the story are also a confusing mix. On the one hand, a lot of the quotes in the story suggest that they think of cyber as like nuclear deterrence, in that escalation could be a very, very, very bad thing. On the other hand, keeping the decision rules classified seems to cut against any kind of deterrence logic. The New Republic's Thomas Rid is equally bumfuzzled: Barack Obama is probably America’s most web-savvy president ever. But when it comes to actually crafting policy for the nation's cyber security, his administration has been consistent in only one aspect: bluster. Obama's major legacy on cyber security, it increasingly seems, will be an infrastructure for waging a non-existent “cyber war” that's incapable of defending the country from the types of cyber attacks that are actually coming.... [T]he rhetoric of war doesn't accurately describe much of what happened [in recent cyberattacks]. There was no attack that damaged anything beyond data, and even that was the exception; the Obama administration's rhetoric notwithstanding, there was nothing that bore any resemblance to World War II in the Pacific. Indeed, the Obama administration has been so intent on responding to the cyber threat with martial aggression that it hasn't paused to consider the true nature of the threat. And that has lead to two crucial mistakes: first, failing to realize (or choosing to ignore) that offensive capabilities in cyber security don’t translate easily into defensive capabilities. And second, failing to realize (or choosing to ignore) that it is far more urgent for the United States to concentrate on developing the latter, rather than the former. In many ways, what's happening with cyber appears to mirror a more general conceptual uncertainty about whether resources and doctrine that apply to other states in the international system can be applied to non-state actors as well. In cyber, it seems that the latter is the more immediate and constant threat, while the former is the more serious but latent threat. On the other hand, when pondering an actor like China, perhaps that dichotomy breaks down. I'm far from a cyber expert, but I do know a litle bit about international relations theory. What's disturbing about these stories about cyber is not that they reflect aspects of offensive realism -- it's that they reflect a more inchoate cluster of contradictory impulses.

**Congress key to solve trust deficit**

Benjamin **Wittes 9**, senior fellow and research director in public law at the Brookings Institution, Stuart Taylor, an American journalist, graduated from Princeton University and Harvard Law School, Legislating the War on Terror: An Agenda for Reform, November 3, 2009, pg. 329-330

While President Obama’s policy makes a clean break with the Bush record, it actually does not effectively answer the question of how best to handle this group. Indeed, the new policy seems likely to fail on both a substantive and a procedural level. First, it goes too far by banning all coercion all the time. Second, the rule is unstable because it can so easily be changed **at the whim of the president**, whether Obama or, perhaps, a successor more like Bush. An administration down the road that wanted to resume waterboarding could rescind the current order and adopt legal positions like those of the prior administration. Unless the Obama administration and Congress hammer out rules that provide interrogators with clear guidance about what is and is not allowed and write those rules into statute, the United States risks vacillating under the vagaries of current law between overly permissive and overly restrictive guidance. The general goals of new legislation should be threefold: —To make it a crime beyond cavil to use interrogation methods considered by reasonable people to be torture. The torture statute already does that to some degree, but the fact that it arguably permitted techniques as severe as waterboarding suggests that it may require some tightening. The key here is that the statute should cover all techniques the use of which ought to prompt criminal prosecution. —To subject CIA interrogators in almost all cases to rules that, without relaxing current law’s ban on cruel, inhuman, and degrading treatment, permit relatively mild forms of coercion that are properly off limits to military interrogators. —To allow the president, subject to strict safeguards, to authorize use of harsher methods short of torture (as defined in the revised criminal statute) in true emergencies or on extraordinarily high-value captives such as KSM. **Only Congress** can **provide** the **democratic** **legitimacy** and the fine-tuning of criminal laws that can **deliver such a regime**. Only Congress can, for example, pass a new law making it clear that waterboarding— or any other technique of comparable severity— will henceforth be a federal crime. Only Congress can offer clear assurances to operatives in the field that there exists a safe harbor against prosecution for conduct ordered by higher-ups in a crisis in the genuine belief that an attack may be around the corner. **Only Congress**, in other words, can create a regime that plausibly turns away from the past without giving up what the United States **will need in the future**.

#### Future president rollback

Friedersdorf 13 (CONOR FRIEDERSDORF, staff writer, “Does Obama Really Believe He Can Limit the Next President's Power?” MAY 28 2013, <http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/>, KB)

Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. The next president can just undo those "self-imposed" limits with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.

#### Obama won’t self-restrain against China

Martin ’13 (Patrick Martin, Global Research, “Obama’s “Cyberwarfare First Strike”: Using Offensive Cyber Effects Operations (OCEO) to Destabilize Countries”, <http://www.globalresearch.ca/obamas-cyberwarfare-first-strike-using-offensive-cyber-effects-operations-oceo-to-destabilize-countries/5338457>, June 10, 2013)

The US government is developing detailed plans to attack other countries using cyberwarfare techniques, according to a report Friday in the British daily newspaper Guardian. President Obama gave the orders to plan for cyber attacks, including preemptive strikes by the US, in an 18-page directive issued last October and leaked to the newspaper, which published it on its web site. Presidential Policy Directive 20 defines Offensive Cyber Effects Operations (OCEO), which “can offer unique and unconventional capabilities to advance US national objectives around the world with little or no warning to the adversary or target and with potential effects ranging from subtle to severely damaging.” It continues: “The United States government shall identify potential targets of national importance where OCEO can offer favorable balance of effectiveness and risk as compared with other instruments of national power.” The directive instructs the secretary of defense, the director of national intelligence, and the director of the CIA to “prepare for approval by the president through the National Security Advisor a plan that identifies potential systems, processes and infrastructure against which the United States should establish and maintain OCEO capabilities.” Since the deadline for this action is six months after the approval of the directive, which came in October, this plan has presumably already been developed and submitted to the National Security Council. In relation to foreign targets of cyberwarfare, the directive authorizes actions by US government agencies in circumstances where the identity and nationality of the “adversary” are uncertain. The US government “shall make all reasonable efforts, under circumstances prevailing at the time, to identify the adversary and the ownership and geographic location of the targets and related infrastructure where DCEO or OCEO will be conducted or cyber effects are expected to occur.” Translated into plain language, this means that a US government attack on alleged hackers could target a foreign government or military without definitively identifying them as the source of the hacking. In recent months, the Obama administration and US media, spearheaded by the New York Times, have hyped the threat of Chinese hackers, supposedly organized through a Chinese military office in Shanghai, without providing any actual proof of the linkage. As one of its intelligence sources told the Guardian, US complaints about Chinese cyberwarfare efforts were hypocritical: “We hack everyone everywhere. We like to make a distinction between us and the others. But we are in almost every country in the world.” The directive acknowledges that cyber-warfare efforts by the US government may produce “potential unintended or collateral consequences,” not only within the targeted countries, but worldwide and in the US itself. These consequences could include “loss of life, significant responsive actions against the United States, significant damage to property, serious adverse US foreign policy consequences, or serious economic impact on the United States.” The directive essentially reiterates the doctrine of preventive warfare, enunciated by George W. Bush in 2002 in the run-up to the invasion of Iraq. Bush declared that the United States had the right to attack other countries, not merely to preempt an impending attack, but to prevent any potential attack at any time in the future—a formula for unlimited worldwide aggression. Bush himself was giving little more than a rehash of the Nazi doctrine condemned by the Nuremburg Tribunal after World War II, when a US prosecutor declared that the supreme crime of Hitler’s Germany was the “planning, preparation, initiation and waging of a war of aggression,” from which all the other crimes, including the Holocaust, ultimately stemmed. The directive’s pro-forma declaration that the “United States Government shall reserve the right to act in accordance with the United States’ inherent right of self defense as recognized in international law” cuts no ice, since both the Bush and Obama administrations include such actions as the invasion of countries, bombing, missile strikes and assassinations under the rubric of “self defense.” The directive also discusses possible cyber attacks by the US government against domestic targets inside the country. This raises the prospect that in the event of a political crisis in the US, stemming either from domestic political and social upheaval or mass opposition to war, the US government could shut down the Internet and social media, target specific web sites or carry out other acts of cyber warfare in the name of “national security.” While the document claims that only the president can authorize cyber operations inside the United States, it contains a lengthy section, the longest in the entire executive order, spelling out what it calls “Emergency Cyber Action,” which can be taken by the secretary of defense or “a department or agency head with appropriate authorities”—in other words, any top official of the military-intelligence apparatus. Such actions can be taken if “necessary to mitigate an imminent threat or ongoing attack against US national interests.” This would include preventing “significant damage with enduring national impact on the Primary Mission Essential Functions of the United States Government, U.S. critical infrastructure and key resources, or the mission of U.S. military forces…” The language is so broad that it could easily be applied to a strike by US government employees or workers at any corporation providing services to the military or a government agency, or to workers in telecommunications, utilities, public transportation, or anything else designated as “critical” by the government. According to the directive, domestic cyber-warfare actions would be coordinated with dozens of federal departments and conducted in accordance with the “National Continuity Policy” document of May 9, 2007. This is a reference to one of the last versions of the notorious Bush administration planning for “continuity of government,” in which plans were made for transferring all federal power to a small cabal of executive branch officials—lodged in Richard Cheney’s infamous “undisclosed secure location”—and excluding both the legislative and judicial branches of government. In other words, from Bush to Obama, from Republican to Democrat, the preparations of the American ruling elite for dictatorial rule continue and accelerate. While nominally justified by the threat of “terrorism” or, in the case of cyber-warfare, the supposed threat of China, the real target of these preparations is the American working class.

#### Links to politics

Hallowell ’13 [Billy Hallowell, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>, KB]

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Congress will backlash to the aff by holding up (insert politics DA bill here)

Risen ’04 (Clay, Assistant Editor – New Republic, The American Prospect, Aug, Lexis)

Congress provides an additional, if somewhat less effective, check on executive orders. In theory, any executive order can be later annulled by Congress. But in the last 34 years, during which presidents have issued some 1,400 orders, it has defeated just three. More often, Congress will counter executive orders by indirect means, holding up nominations or bills until the president relents. "There's always the potential that a Congress angry about one issue will respond by limiting other things you want," says Mayer.

## A2 Circumvention

#### No circumvention - Empirics

**Waxman 1-28**-13 [Matthew Waxman is a professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations. He previously served as principal deputy director of policy planning (2005–7) and acting director of policy planning (2007) at the US Department of State. He also served as deputy assistant secretary of defense for detainee affairs (2004–5), director for contingency planning and international justice at the National Security Council (2002–3), and special assistant to National Security Adviser Condoleezza Rice (2001–2). He is a graduate of Yale College and Yale Law School, “Executive-Congressional Relations and National Security,” <http://www.advancingafreesociety.org/the-briefing/executive-congressional-relations-and-national-security/>]

The last four years should have been a good period for executive-congressional relations in the areas of national security and foreign affairs. The president, vice president, and secretary of state were former Senators. They all viewed President George W. Bush as too inclined to bypass or ignore Congress and they promised to do better. And the Obama administration started with Democratic majorities in the House and Senate.¶ It is thus surprising that the past four years have been notable for inter-branch clashes and paralysis on some major national security agenda items, with the administration failing to engage Congress or operating in a slowly reactive mode, while many congressional Republicans remain in an obstructionist mode. In the second term, the Obama administration will need to pick its legislative priorities more deliberately, engage with allies and opponents in Congress more actively, and be willing to negotiate compromises or wage aggressive campaigns on key issues.¶ Congress has repeatedly stifled the president’s signature counterterrorism promise to close the Guantanamo Bay detention facility. Congress’s opposition has been more than political. Beginning with legislation in 2010 when Democrats controlled both houses of Congress, Congress has consistently placed legal barriers on the president’s ability to transfer Guantanamo detainees or to try them in civilian courts in the United States. After hinting in his speech at the National Archives in 2009 that he would work with Congress on these issues, Obama has put forward no proposal of his own, nor has his administration been willing to explore possible compromises on long-term Guantanamo policies, instead playing defense against moves by congressional blocs with their own Guantanamo agendas. That defensive strategy has included a series of veto threats, which were always abandoned in the end and now carry little credibility.¶ With regard to war powers, the administration barely escaped a significant congressional rebuke after it failed to obtain congressional authorization for the operations in Libya in 2011 or at least to advance a convincing account for why such authorization was not needed. The administration conducted international diplomacy effectively, and obtained UN Security Council and Arab League endorsement of military operations to protect Libyan civilians from slaughter. However, on the domestic front it alienated even congressional supporters of its policy with poor early consultation on the Hill. In the end, Senate Majority Leader Harry Reid prevented the Senate from taking up a resolution passed by the Foreign Relations Committee that would have authorized the operation but rejected the administration’s strained interpretation of the War Powers Resolution. Throughout the Libya crisis, the administration’s approach toward Congress was passive and tentative. It was fortunate for the administration that Congress was splintered and few members were willing to defend its institutional prerogatives, at least within the limited timeframe of the intervention. But Obama might not be so lucky the next time. As to treaties, the administration garnered super-majority Senate advice and consent on a record-low number of agreements in its first term. Despite a strong effort by Secretary of State Hillary Clinton and the Navy leadership, the administration failed to get the UN Convention on the Law of the Sea out of the Senate Foreign Relations Committee. Once again, part of the explanation for failure was the administration’s poorly timed and coordinated engagement of the Senate on the issue. In the face of Senate Republican portrayals of other global treaties as threats to US sovereignty, the White House failed to throw its full weight behind its valid arguments that the Law of the Sea Convention would strengthen the US position with respect, for example, to crisis hotspots in Asia and in commercial spheres.¶ To be clear, the Obama administration has scored successes, too. For example, putting aside the policy merits, it worked reasonably well with Congress on the completed wind-down of the Iraq war. It will need to do the same with respect to the planned wind-down of the Afghanistan war and in developing a long-term strategy for Afghanistan and Pakistan. Much of the blame for policy incoherence on many national security issues such as cybersecurity lies with Congress, which is infected by political polarization and dysfunction as much in international affairs as it is in domestic affairs.¶ Going forward, the Obama administration will need to bring the same kind of sustained attention and hard-nosed strategic thinking to its legislative agenda on national security issues as it has on some major domestic policy issues. First, it will need to be selective in its legislative agenda and then wage aggressive campaigns on matters it labels national security priorities. It did so early in the first term with respect to the New START Treaty, which was in danger of collapse until the administration went all out for it. Obama’s team enlisted influential allies from previous Republican administrations, engaged in a serious communications campaign at the highest levels, and negotiated as necessary to get the key votes in favor of the treaty.¶ On some issues, the administration will need to decide on a coherent policy internally and then more actively engage both its allies and opponents on Capitol Hill. One area where this will be important is the legal architecture of counterterrorism policy. It is widely understood that continuing to rely on the September 2001 congressional Authorization for Use of Military Force as the basis for detention and targeting operations is increasingly problematic as al Qaeda splinters apart and as the United States winds down combat operations in Afghanistan. The Obama administration also maintains publicly a commitment to closing Guantanamo. Yet it has not come forward with proposed legislative frameworks for dealing with these issues. Even though the president has said repeatedly that he wants to work with Congress on a more durable legal architecture for counterterrorism operations, the administration has been reactive and appears to be undecided about what, if anything, it wants from Congress.